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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

FRIENDS OF THE EARTH,

Plaintiff,

v.

JENNIFER GRANHOLM, in her
official capacity as Secretary of the
Department of Energy; UNITED
STATES DEPARTMENT OF
ENERGY,

Defendants.

Case No.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

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1. This case challenges the award of over \$1 billion in federal funding to keep the aging Diablo Canyon Power Plant (“DCPP” or “Diablo Canyon”) from shutting down. The U.S. Department of Energy’s (“DOE”) approval of this award involves a fundamentally flawed and arbitrary process under the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321-4347. DOE purported to satisfy its NEPA obligations under the new Civil Nuclear Credit Program (“CNC program”) by adopting an over 50-year old environmental analysis, along with other outdated and incomplete NEPA documents—that taken together are grossly deficient to satisfy DOE’s NEPA obligations for this award—in lieu of either conducting its own original or supplemental NEPA analysis, subject to public participation or any opportunity to comment, in support of DOE’s January 2, 2024 Record of Decision (“ROD”) authorizing the award of funding.

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2. DOE’s attempt to repackage these prior NEPA documents as its own “Final Environmental Impact Statement” fails to satisfy the basic requirements for adoption under NEPA, which are intended to help agencies avoid unnecessary duplicative work—not enable them to sidestep the mandate to take a hard look at the environmental impacts of the current action under review, disclose those impacts to the public, consider alternatives that could reduce and/or mitigate those impacts, and provide the public with a meaningful old opportunity for notice and comment so that the decisionmakers can render informed and thoughtful decisions. Here, by ignoring the fundamental differences between the original action and the current action under review and by adopting severely outdated and incomplete NEPA documents, DOE has committed significant federal funding to support continued operations at two outdated nuclear reactors without any lawful NEPA process.

1 3. Even more concerning, the CNC award will allow Diablo Canyon to
2 continue operating beyond the horizon that the existing NEPA documents
3 contemplated. Pursuant to this award, PG&E will receive payments for Diablo
4 Canyon over a four-year period from January 2023 to December 2026, with
5 payment of credits set to *begin* in 2025 (retroactively at first and then on an
6 annual basis). But DOE relied on outdated NEPA documents in which the
7 Nuclear Regulatory Commission (“NRC”) only analyzed impacts up to the point
8 at which the existing licenses would expire, in November 2024 and August 2025
9 for Units 1 and 2, respectively. By turning around and using these same outdated
10 and flawed NEPA analyses to green light operation of the DCPD *beyond* 2025
11 (which those prior analyses did not contemplate, let alone evaluate), DOE has
12 taken Diablo Canyon into uncharted territory. Indeed, the bulk of the
13 environmental analysis adopted by DOE here was prepared before the DCPD was
14 even operational and in fact, the environmental impacts from extending the
15 lifespan of this aging power plant at this point in time have not been adequately
16 addressed or disclosed to the public, or been the subject of any meaningful public
17 participation through comments, hearings, or other such opportunities to propose
18 alternatives or raise concerns about the myriad impacts of DOE’s award.

19 4. At minimum, DOE must acknowledge and account for potential
20 impacts from accidents—especially those involving release of deadly radiation—
21 including, but not limited to, updated demographic data, analysis of the integrity
22 of plant infrastructure, and an accident analysis that accounts for several newly
23 discovered earthquake faults in the vicinity of DCPD. A lawful analysis must also
24 include the current ecological impacts from DCPD’s outmoded once-through
25 cooling system and a comprehensive cumulative impacts analysis, which is
26 wholly lacking from earlier NEPA documents. This impact analysis must account
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1 not only for the award period through 2026, but beyond and for as long as DOE
2 determines the DCPD is likely to remain operational.¹

3 5. Nothing DOE did as part of its effort to shoehorn in a few pages of
4 more “recent analysis” into its republication of generations-old NEPA documents
5 can cure these fundamental legal defects or satisfy DOE’s obligation to actually
6 take a hard look at the impacts of, and alternatives to, extending the lifespan of
7 the Diablo Canyon Power Plant through the CNC credit award in a manner that
8 complies with both the spirit and letter of NEPA. To the contrary, DOE’s belated
9 attempt to include an abbreviated and incomplete discussion of environmental
10 impacts only serves to highlight what the agency failed to disclose to the public
11 (and solicit comment on) before this decision was final, as well as the impact
12 analysis and alternatives consideration that *still* remains to be done.

13 6. DOE’s decision to authorize the final CNC award presents multiple
14 violations of NEPA; its implementing regulations, *see* 40 C.F.R. Part 1500; and
15 the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706. It does so by
16 adopting a set of outdated NEPA documents that, even taken together, do not
17 constitute an adequate EIS under NEPA’s implementing regulations; by
18 republishing these earlier NEPA documents as final—i.e. without going through
19 any draft publication or public comment process—despite the fact that the
20 original action and the current action are not “substantially the same”; and by
21 failing either to supplement the existing NEPA documents or to prepare an
22 original, adequate EIS and make those drafts available for proper public notice
23 and comment, DOE has violated NEPA, its regulations, and the APA.

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27 ¹ PG&E has applied to the NRC for a 20-year license renewal for each of its twin
28 reactors. If granted, this would approve the facility for continued operations
through 2044 and 2045. Friends has moved to intervene in this proceeding.

JURISDICTION AND VENUE

7. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1346 (civil action against the United States), and 5 U.S.C. § 702 (the APA).

8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e) because the environmental impacts resulting from the CNC award will occur in and impact this district.

9. This Court may grant the relief requested pursuant to 28 U.S.C. § 2201 (authorizing declaratory relief); 28 U.S.C. § 2202 (authorizing injunctive relief); and 5 U.S.C. §§ 701-706 (providing for judicial review of agency action under the APA, and identifying vacatur and remand of agency action as the default remedy).

PARTIES

10. Plaintiff FRIENDS OF THE EARTH (“Friends”) is a grassroots 501(c)(3) non-profit organization dedicated to improving the environment and creating a more healthy and just world. The organization was founded in 1969 by David Brower in part to protest safety and environmental issues at the newly emerging Diablo Canyon. Friends has more than 226,000 members in all 50 states and the District of Columbia, approximately 32,200 of whom reside in California. In addition to formal members, Friends has more than 8.7 million online activist supporters across the country.

11. In 2016, after years spent working toward a just and safe decommissioning of Diablo Canyon, Friends entered into an agreement with PG&E and others whereby Diablo Canyon would retire in 2024 and 2025. In exchange, Friends agreed to dismiss its active legal challenges over Diablo Canyon’s license renewal. However, in September 2022, the State of California passed legislation supporting Diablo Canyon’s extension for five additional years

1 beyond its planned retirement. PG&E now has license renewal applications
2 pending with the NRC, which seeks 20 additional years for each reactor, and is
3 now authorized to receive up to \$1.1 billion from DOE under the CNC program
4 to support this extension. Thus, while the reactors were slated to close in 2024
5 and 2025 at the expiration of the two active NRC licenses, respectively, they will
6 remain operational as a direct result of the CNC award, which extended the
7 facility's lifetime at least through 2026 and likely beyond. Friends is deeply
8 concerned over the potential for significant harm to the environment and public
9 safety as a result of this extension.

10 12. Friends has members who live, work, and own property within 50
11 miles of the Diablo Canyon reactors. The health and safety of Friends' members
12 who live and work in close proximity to Diablo Canyon, and the health of the
13 surrounding environment, could be catastrophically harmed by a release of
14 radiation from an accident or equipment failure at one or more of the Diablo
15 Canyon reactors. This includes the risk of accidents due to earthquakes along any
16 one of the nearby faults that have been discovered since the facility was last
17 assessed for seismic risks. For example, Friends members Lucy Jane Swanson
18 (San Luis Obispo, CA), Julie Mansfield-Wells (Los Osos, CA), Jill ZamEk
19 (Arroyo Grande, CA), and Linda M. Seeley (Los Osos, CA) each live in the
20 vicinity of DCPD and believe, based on current information regarding the
21 infrastructure integrity at DCPD and new information regarding seismic risks
22 (among other new information), that extending the lifespan of DCPD poses an
23 unacceptable radiological accident risk to the health and safety of them, their
24 families, and their communities.

25 13. In addition to this risk of catastrophic radiation exposure, Friends'
26 members also use and enjoy the central California coast, including the area
27 around DCPD, and visit it regularly for activities such as fishing, boating,
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1 swimming, and exploring tidepools. For example, member Julie Mansfield-Wells
2 is a frequent visitor to Avila Beach near the DCP, where she enjoys the beach
3 and ocean with her family, and she also regularly takes sailboats and canoes out
4 into Morro Bay for fishing. The continued operation of the DCP, as a result of
5 DOE's January 2024 ROD approving the CNC award and extending the lifetime
6 of the plant, will prolong the already severe damage to the ecological health of
7 adjacent coastal area caused by the plant's outdated once-through cooling system.
8 The organization's members will therefore suffer aesthetic, recreational,
9 scientific, and other injuries caused by DOE's award extending the life of DCP.

10 14. Friends regularly submits comments as part of NEPA and other
11 decisionmaking processes in connection with federal actions that will affect the
12 interests of Friends and its members. For example, Friends has submitted—and
13 will continue to submit—comments and other proactive communications to the
14 NRC regarding the damaging impacts of continued operation of the DCP, as
15 part of prior and future NRC processes related to Diablo Canyon's operations.
16 Friends' and its members' interests were severely harmed by DOE's failure to
17 invite their participation in DOE's decisionmaking process to decide whether to
18 award funds to extend the life of Diablo Canyon. Had DOE not deprived them of
19 their right to comment on this federal action, Friends and its members (including
20 those named in this Complaint) would have submitted extensive comments
21 identifying serious environmental impacts that will result from DOE's decision
22 (including impacts that no prior NEPA analysis has ever evaluated), cumulative
23 impacts that must inform DOE's decision (which also have never been evaluated
24 by any prior NEPA analysis), and alternatives that DOE must consider to reduce
25 and/or mitigate the impacts of this action. Because DOE failed to solicit public
26 comment or offer any other recognized means of public participation in the
27 agency's decisionmaking process, Friends and its members were gravely harmed
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1 by DOE's failure to follow the lawfully required procedures required by NEPA
2 and the APA.

3 15. The ongoing injuries that Friends and its members are suffering are
4 the direct result of DOE's actions, including its flawed adoption of outdated,
5 deficient NEPA analyses and its failure to solicit public comment or to allow any
6 other opportunity for meaningful public participation in DOE's funding award
7 that will allow the DCPD to operate well beyond its anticipated license
8 expiration. The injuries of Friends and its members and supporters can be
9 redressed by a ruling from this Court declaring DOE's adopted EIS legally
10 inadequate; vacating DOE's EIS and ROD that authorized the CNC award; and
11 remanding these matters to DOE for further consideration consistent with federal
12 laws.

13 16. Defendant JENNIFER GRANHOLM is the Secretary of the
14 Department of Energy and is directly responsible for the supervision,
15 management, and control of the agency. Accordingly, she is responsible for
16 overseeing DOE's actions challenged in this lawsuit and is sued in her official
17 capacity.

18 17. Defendant DEPARTMENT OF ENERGY prepared the ROD
19 authorizing the final award of credits to Diablo Canyon and served as the lead
20 agency in adopting the FEIS challenged in this action.

21 **LEGAL BACKGROUND**

22 *National Environmental Policy Act*

23 18. Congress enacted NEPA in 1969 to, among other things, "encourage
24 productive and enjoyable harmony between man and his environment" and to
25 promote government efforts "that will prevent or eliminate damage to the
26 environment." 42 U.S.C. § 4321. NEPA is intended "to ensure Federal agencies
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1 consider the environmental impacts of their actions in the decision-making
2 process” and it “establishes the national environmental policy of the Federal
3 Government to use all practicable means and measures to foster and promote the
4 general welfare, create and maintain conditions under which man and nature can
5 exist in productive harmony, and fulfill the social, economic, and other
6 requirements of present and future generations of Americans.” 40 C.F.R. §
7 1500.1(a).

8 19. The Council on Environmental Quality (“CEQ”)—an agency within
9 the Executive Office of the President—has promulgated regulations
10 implementing NEPA, *see* 40 C.F.R. §§ 1500-1508, which are “binding on all
11 federal agencies.” *Id.* § 1500.3(a).² NEPA regulations are “intended to ensure that
12 relevant environmental information is identified and considered early in the
13 process in order to ensure informed decision making by Federal agencies.” *Id.* §
14 1500.1(b).

15 20. To this end, NEPA requires federal agencies to prepare a “detailed
16 statement”—i.e., an EIS—for all “major federal actions significantly affecting the
17 quality of the human environment.” 42 U.S.C. § 4332(c). An EIS must describe
18 (1) “the environmental impact of the proposed action,” (2) “the adverse
19 environmental effects which cannot be avoided,” and (3) “alternatives to the
20 proposed action.” 42 U.S.C. § 4332(C)(i)-(iii). The purpose of the EIS “is to
21 ensure agencies consider the environmental impacts of their actions in decision
22 making. It shall provide full and fair discussion of significant environmental
23 impacts and shall inform decision makers and the public of reasonable
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26 ² Current CEQ regulations apply in this case. Adopted NEPA documents must be
27 adequate “under the regulations in this subchapter.” 40 C.F.R. § 1506.3(a).
28 Accordingly, the regulations in place at the time of DOE’s July 2023 adoption of
the NRC NEPA documents, as well as the January 2024 ROD, apply here.

1 alternatives that would avoid or minimize adverse impacts or enhance the quality
2 of the human environment.” 40 C.F.R. § 1502.1.

3 21. The EIS must “specify the underlying purpose and need to which the
4 agency is responding in proposing the alternatives.” 40 C.F.R. § 1502.13. The
5 alternatives analysis, described by CEQ as the “heart of the NEPA process,”
6 CEQ, Forty Most Asked Questions Concerning CEQ’s National Environmental
7 Policy Act Regulations, 46 Fed. Reg. 18026 (March 23, 1981), must then
8 “present the environmental impacts of the proposed action and the alternatives in
9 comparative form based on the information and analysis presented in the sections
10 on the affected environment (§ 1502.15) and the environmental consequences (§
11 1502.16).” 40 C.F.R. § 1502.14. Each alternative should be “considered in detail,
12 including the proposed action, so that reviewers may evaluate their comparative
13 merits.” *Id.*

14 22. Agencies are directed to consider a broad range of environmental
15 effects, defined as “changes to the human environment from the proposed action
16 or alternatives that are reasonably foreseeable,” 40 C.F.R. § 1508.1(g), including
17 “ecological (such as the effects on natural resources and on the components,
18 structures, and functioning of affected ecosystems), aesthetic, historic, cultural,
19 economic, social, or health” impacts and must address them in the EIS “whether
20 direct, indirect, or cumulative.” 40 C.F.R. § 1508.1(g)(4).

21 23. Direct effects are those “caused by the action and occur at the same
22 time and place,” while indirect effects are “caused by the action and are later in
23 time or farther removed in distance, but are still reasonably foreseeable.” *Id.* §
24 1508.1(g)(1), (2). Cumulative impacts are those that result from the “incremental
25 effects of the action when added to the effects of other past, present, and
26 reasonably foreseeable future actions,” regardless of whether undertaken by other
27 federal agencies or private third parties. *Id.* § 1508.1(g)(3). “Cumulative impacts
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1 can result from individually minor but collectively significant actions taking
2 place over a period of time.” *Id.*

3 24. As an alternative to preparing an original EIS in every instance where
4 one is required, an agency may adopt a draft or final EIS, or portion thereof,
5 prepared by another federal agency “provided that the statement . . . meets the
6 standards for an adequate statement . . . under the regulations in this subchapter.”
7 40 C.F.R. § 1506.3(a). Further, “[i]f the actions covered by the original [EIS] and
8 the proposed action are substantially the same, the adopting agency shall
9 republish it as a final statement consistent with [40 C.F.R.] § 1506.10.” 40 C.F.R.
10 § 1506.3(b)(1). But where “the actions are not substantially the same, the
11 adopting agency shall treat the statement as a draft and republish it, consistent
12 with § 1506.10.” *Id.* In the latter scenario—i.e., where an adopting agency must
13 treat the prior EIS as a draft (rather than final) EIS—the procedures attending to a
14 draft EIS, including the requirement to solicit public comment, must be followed.
15 *See, e.g., id.* § 1503.1(a).

16 *Infrastructure Investment and Jobs Act and the Civil Nuclear Credit Program*

17 25. Enacted on November 15, 2021, the Infrastructure Investment and
18 Jobs Act (“IIJA”), was designed to provide a once-in-a-generation investment in
19 America’s aging infrastructure. Among the Act’s numerous programs, the CNC
20 Program was established as a “\$6 billion strategic investment through the
21 Bipartisan Infrastructure Law to help preserve the existing U.S. reactor fleet and
22 save thousands of high-paying jobs across the country.”³
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26 ³ Although Diablo Canyon was already slated to close, the California legislature
27 passed SB 846 on September 1, 2022 and Governor Gavin Newsom signed the
28 bill into law the next day, which, among other things, incentivized PG&E to
apply for certification under the new CNC Program.

1 26. The IIJA directed that the Secretary of Energy “establish a civil
2 nuclear credit program . . . (1) to evaluate nuclear reactors that are projected to
3 cease operations due to economic factors; and (2) to allocate credits to certified
4 nuclear reactors.” 42 U.S.C. § 18753(b)-(b)(2). The statute provides that, in order
5 to receive funds, a nuclear reactor must complete the following steps: submit a
6 certification application; if certified, submit a sealed bid for credits; and then be
7 selected via auction among the certified applicants to receive credits over the 4-
8 year award period.

9 27. First, to obtain certification, an operator of a nuclear reactor must
10 submit an application to the Secretary containing the following information
11 demonstrating economic eligibility: “information on the operating costs
12 necessary” to determine eligibility, including “average projected annual operating
13 loss . . . over the 4-year period for which credits would be allocated”; “an
14 estimate of the potential incremental air pollutants that would result if the nuclear
15 reactor were to cease operations”; “known information on the source of produced
16 uranium”; as well as “a detailed plan to sustain operations at the conclusion of the
17 applicable 4-year period” 42 U.S.C. § 18753(c)(1)(A)(i)-(iv).

18 28. The Secretary must then determine whether or not to certify a reactor
19 depending on whether it meets each of the following minimum requirements: the
20 reactor “is projected to cease operations due to economic factors”; “pollutants
21 would increase if the nuclear reactor were to cease operations and be replaced
22 with other types of power generation”; and “the [NRC] has reasonable assurance
23 that the nuclear reactor . . . will continue to be operated in accordance with the
24 current licensing basis” and “poses no safety hazards.” *Id.* §
25 18753(c)(2)(A)(ii)(I)-(III).

26 29. Once certified, a nuclear reactor may then submit a sealed bid to
27 become eligible to receive credit allocations. The bid must “describe[] the price
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per megawatt-hour of the credits desired” and “include[] a commitment, subject to receipt of credits, to provide a specific number of megawatt-hours of generation during the 4-year period for which credits would be allocated.” *Id.* § 18753(d)(1)(A)-(B). Under the statute, the Secretary is directed to “establish a process for evaluating bids submitted under subsection (d)(1) through an auction process” and “select certified nuclear reactors to be allocated credits.” *Id.* § 18753(e)(1)(A)-(B). If selected, the statute provides that “a certified nuclear reactor shall be allocated credits for a 4-year period beginning on the date of selection.” *Id.* § 18753(e)(2). This allocation is further subject to the requirement of periodic audits. *Id.* § 18753(g)(1).

CNC Guidance

30. DOE issued a guidance document in April 2022, which it later revised in June 2022, providing additional detail on the requirements to participate in the CNC Program for the first award cycle.⁴

31. In addition to setting forth the standard requirements for a certification application, *see* Guidance at 13-30, DOE also specified that the first award cycle will be expressly limited to nuclear reactors “that are projected to cease operations imminently and with a high degree of certainty.” *Id.* at 5. Specifically, “to ensure the first award cycle of the CNC Program is directed toward Nuclear Reactors most at risk of imminent closure, the Applicant must demonstrate that it has made a public filing on or before November 15, 2021, the date of enactment of the IIJA, announcing its intention to permanently cease operations of the Nuclear Reactor on or before September 30, 2026.” *Id.* at 11.

⁴ *See* U.S. Department of Energy, *Guidance for the Civil Nuclear Credit Program, Revision 1* (June 30, 2022), <https://www.energy.gov/gdo/civil-nuclear-credit-first-award-cycle> (follow link to CNC Amended Guidance – June 2022) (hereinafter “CNC First Award Guidance” or “Guidance”).

1 32. After rendering a decision on whether to certify a nuclear reactor as
2 eligible for the CNC program, the Guidance states that DOE must render a
3 conditional award decision within 30 days. *Id.* at 7. Following the conditional
4 award decision, DOE must then execute the Credit Redemption Agreement, make
5 the Final Award Selection and issue credits to the selected reactors “as soon as
6 reasonably practicable after the announcement of Conditional Award Decisions.”
7 *Id.* at 9.

8 33. The statute expressly requires, however, that all environmental review
9 must be completed prior to DOE’s finalization of any award: “DOE will not
10 execute any Credit Redemption Agreement or make any Final Award until it has
11 completed its obligations pursuant to the National Environmental Policy Act
12 (NEPA), Section 106 of the National Historic Preservation Act, and any other
13 obligations pursuant to relevant environmental laws (e.g., Endangered Species
14 Act).” *Id.* at 30. Regarding NEPA specifically, the Guidance further states that
15 “[i]n order to meet its NEPA obligations, DOE anticipates adopting, or adopting
16 and supplementing, the Final Environmental Impact Statement prepared for the
17 Selected Nuclear Reactor by the NRC.” *Id.* at 41.

18 34. Once these conditions are satisfied and the award is finalized, credits
19 are issued “in the form of a voucher for payment,” and are subject to adjustment
20 downward to reflect any necessary revenue or capital adjustments necessary at
21 the end of the Award Year. *Id.* at 33-34. Within 90 days of the completion of the
22 Award Year, the Selected Nuclear Reactor “shall submit a Payment Certificate to
23 make a request for Payments” and DOE “shall pay to the Selected Nuclear
24 Reactor, within thirty (30) days of submission, less any necessary adjustments.”
25 *Id.* at 34-35.

FACTUAL BACKGROUND

Diablo Canyon Power Plant

35. The DCPD is an electricity-generating nuclear power plant located near the community of Avila Beach in San Luis Obispo County, California operated by Pacific Gas & Electric (“PG&E”). After the permanent shutdown of the San Onofre Nuclear Generating Station in 2013, it is the only remaining operational nuclear power plant in the state. The facility has been in operation since 1985 and contains two pressurized water reactor units. Unit 1 is currently licensed until November 2, 2024 and Unit 2 until August 26, 2025.

36. Despite these impending expiration dates, both units have received NRC authorization, through an exemption to the “Timely Renewal Rule,” to continue operations under their current licenses indefinitely.⁵ Under normal circumstances, if a licensee of a nuclear power plant submits a renewal application that is sufficient for the NRC’s review at least five years before expiration of the existing license, NRC can authorize the plant to continue operating until the application has been finally determined. *See* 10 C.F.R. § 2.109(b). As the NRC itself explains, the Timely Renewal Rule was designed “to protect licensees who have complied with agency rules in applying for a renewed license from losing valuable rights because of delays in the administrative process.”⁶

⁵ Friends has an active legal challenge pending before the U.S. Court of Appeals for the Ninth Circuit, which seeks review of NRC’s authorization.

⁶ NRC, Reactor License Renewal Process, <https://www.nrc.gov/reactors/operating/licensing/renewal/process.html#timely-renewal>.

1 37. Diablo Canyon did not comply with this explicit regulatory
2 requirement; however, in March 2023, NRC granted the DCPD an exemption
3 from its timely renewal requirements “provided [“PG&E”] submits a sufficient
4 license renewal application for the reactors by December 31, 2023.”⁷ PG&E
5 thereafter submitted a license renewal application for both units on November 7,
6 2023, which now allows Diablo Canyon’s “operating license to continue beyond
7 its expiration dates [] until NRC makes a final determination on DCPD’s license
8 renewal application.”⁸ There is no statutory or regulatory deadline for the NRC to
9 act on this license renewal application, meaning that the DCPD can operate
10 indefinitely beyond the expiration dates in the current licenses, until NRC reaches
11 a final determination.

12 38. This exemption from the timely renewal requirements together with
13 the financial lifeline supplied by the CNC award, will directly result in DCPD
14 operating through 2026 and quite possibly beyond, which is well past the
15 timeframe contemplated by any previous NEPA process (which in 1993, at the
16 time of the last NEPA assessment looking at the full facility, extended only to
17 September 22, 2021 for Unit 1 and April 26, 2025 for Unit 2). The certification
18 application under the CNC program requires that the reactor present “a detailed
19 plan to *sustain operations* at the conclusion of the applicable 4-year [award]
20 period.” 42 U.S.C. § 18753(c)(1)(A)(iv) (emphasis added); *see also* CNC
21 Guidance at 12. The CNC Guidance also expressly allows funding to be directed
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23 ⁷ NRC, Press Release (March 2, 2023), [https://www.nrc.gov/cdn/doc-collection-](https://www.nrc.gov/cdn/doc-collection-news/2023/23-015.pdf)
24 [news/2023/23-015.pdf](https://www.nrc.gov/cdn/doc-collection-news/2023/23-015.pdf)

25 ⁸ *See* Record of Decision for the Final Environmental Impact Statement for the
26 Civil Nuclear Credit Program Proposed Award of Credits to Pacific Gas and
27 Electric Company for Diablo Canyon Power Plant, 89 Fed. Reg. 69, 70 (January
28 2, 2024).

1 towards capital improvements,⁹ including investments for the specific purpose of
2 "life-extension." CNC Guidance at 7. Given these instructions and having
3 ultimately received over \$1 billion to keep the DCPD operational, some of which
4 will likely be directed to such life-extending investments, it is reasonably
5 foreseeable that the plant will remain in operation for some indefinite period of
6 time past the end of the award period. NRC's actions in exempting the DCPD
7 from the timely renewal requirements further reinforce that. The application
8 renewal process is likely to take years and there is no deadline under which NRC
9 must reach a decision on the DCPD's application. Extending the lifespan of this
10 facility—particularly past the bounds of prior NEPA analyses—carries new
11 public safety and environmental risks and compounds existing harms. Given this
12 likelihood, NEPA demands that DOE take a hard look at the impacts described
13 below, not just until the end of 2026, but into the indefinite future, as bounded by
14 DOE's judgment as to when the DCPD is likely to cease operations despite the
15 new capital improvements resulting from the CNC award.

16 39. Whether from internal equipment failures, seismic events, or possible
17 terrorist acts, even in the best of times all nuclear reactors carry a risk, however
18 remote, that an accident will lead to radiation release—potentially at catastrophic
19 levels. Diablo Canyon presents an even riskier case, given a significant lack of
20 maintenance or upgrades at the facility, recent seismic discoveries in the area,
21 and the plant's use of an outdated cooling mechanisms. In addition, there are
22 grave questions about the physical integrity of the Unit 1 pressure vessel, the
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24 ⁹ As explained in the CNC Guidance, the selected reactor may include
25 expenditures on "Enhancements" in their bid, defined as "capital expenditures for
26 life-extension, uprates or for other purposes," CNC Guidance at 7, subject only to
27 the limitation that annual payments to the reactor will be adjusted downward to
28 the extent that the actual total capital expenditures categorized as either
Enhancements or Sustaining for that award year are less than projected.

1 receptacle that contains the highly radioactive core of a nuclear reactor. Despite
2 being one of the most critical single components in any reactor cooling system,
3 NRC has repeatedly delayed and extended the time period in which it is required
4 to inspect this vessel for possible embrittlement. Indeed, it has still not done so
5 despite being over 14 years overdue.¹⁰

6 40. Here, a reactor accident at Diablo Canyon could put tens of thousands,
7 if not hundreds of thousands, of people in Central California at risk of radiation
8 exposure. Should southerly winds prevail, a radioactive plume could threaten
9 millions of Southern Californian residents, from Santa Barbara to Los Angeles
10 and beyond. Radiation released into the Pacific Ocean could endanger sensitive
11 marine and coastal resources and fragile habitats as well.

12 41. In addition, scientists' understanding of the geologic and seismic
13 environment surrounding DCPD has grown substantially since the facility site
14 was first studied over 50 years ago (and since 1993 when the last NEPA analysis
15 of the full facility occurred). In fact, in recent years, scientists have discovered
16 several *new* earthquake faults, including the Shoreline, San Luis Bay, and Los
17 Osos faults, which were not known when the facility was originally assessed for
18 seismic risks. Whether or not the DCPD would be able to withstand the level of
19 ground motion that could result from an earthquake caused by these new faults
20 and/or shut down safely if needed, has been a subject of ongoing public concern
21 and dispute, but has never been the subject any NEPA process or evaluation by
22 the federal government, project stakeholders, or interested members of the public.

23 42. Diablo Canyon also damages the environment of Central Coastal
24 California each day through its use of an outdated once-through cooling system.

26 ¹⁰ Friends presently has a case before the Ninth Circuit Court of Appeals
27 challenging the NRC administrative decisions that have resulted in the ongoing
28 delay of this vital inspection.

1 The plant draws in an estimated 2.5 billion gallons of ocean water per day for
2 cooling purposes and discharges that water back into the Pacific Ocean
3 approximately 20 degrees hotter. Such systems are well-known to cause an array
4 of environmental harms including ecological damage from the thermal discharge
5 into the ocean environment; impingement of fish and wildlife, in which they are
6 trapped against intake screens; and entrainment, where fish and wildlife,
7 including federally-listed sea turtles, are carried through the cooling system itself.
8 In light of these impacts, in 2011, California initiated a new policy to end once-
9 through cooling systems at coastal power plants, but as a result of extensive
10 lobbying by PG&E, coupled with its planned retirement, Diablo Canyon was
11 exempted from the phaseout. Despite its new plans to stay open, the facility
12 remains exempt from this policy.

13 43. Today, Diablo Canyon annually draws into its antiquated cooling
14 system more than a billion fish in early life stages; most die. And thermal
15 discharge from the DCPD has wholly reshaped the benthic environment in the
16 vicinity of the plant, leading to a collapse of the sea urchin and abalone
17 populations. 89 Fed. Reg. at 72. The cooling system has also resulted in
18 significant levels of take of federally-listed threatened and endangered sea turtles.
19 In 2005 the Nuclear Regulatory Commission conducted a Biological Assessment
20 under the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531-1544, that
21 determined that “continued operation of the DCPD may adversely affect the green
22 sea turtle, loggerhead sea turtle, leatherback sea turtle, and olive ridley sea
23 turtle.” *Id.*

24 44. In light of the persistent radiological accident risk from this over 50-
25 year old facility and the compounding ecological harm, public opposition to
26 DCPD mounted over the years, and in 2016, culminated in a groundbreaking,
27 formal agreement that ensured the retirement of Diablo Canyon’s reactors in
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1 2024 and 2025, provided a just transition for its affected workforce, and set the
2 stage for California to take action toward a safe, justly-sourced, renewable energy
3 future. Friends was party to this agreement, and in exchange, agreed to dismiss its
4 active legal challenges over the facility's safe operation.

5 45. Plans to shutter the DCP, however, began to reverse course in 2021
6 and 2022, as a result of substantial legislative and financial assistance from both
7 the state and federal governments: specifically, the IIJA, which authorized the
8 CNC Program directing DOE to dispense \$6 billion in credit awards to certified
9 nuclear reactors, and California's SB 486, which opened a pathway for PG&E to
10 seek a license extension for Diablo Canyon, including applying for certification
11 under the CNC Program.

12 *CNC Conditional Award to Diablo Canyon*

13 46. PG&E submitted an application to DOE for certification before the
14 September 6, 2022 deadline, and on November 21, 2022, DOE issued a
15 conditional award of credits under the CNC program to PG&E for the Diablo
16 Canyon Power Plant.¹¹ The application itself has never been made public and it
17 was likewise withheld from Friends' recent and still pending Freedom of
18 Information Act Request. In announcing this conditional award, DOE stated that
19 "Units 1 and 2 at the Diablo Canyon Power Plant were scheduled to be
20 decommissioned in 2024 and 2025, but this conditional award of credits valued at
21 up to \$1.1 billion, creates a path forward for Diablo Canyon to remain open."¹²
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24 ¹¹ DOE, Press Release (November 21, 2022),
25 [https://www.energy.gov/articles/biden-harris-administration-announces-major-](https://www.energy.gov/articles/biden-harris-administration-announces-major-investment-preserve-americas-clean-nuclear)
26 [investment-preserve-americas-clean-nuclear](https://www.energy.gov/articles/biden-harris-administration-announces-major-investment-preserve-americas-clean-nuclear).

27 ¹² DOE, Civil Nuclear Credit Award Cycle 1, [https://www.energy.gov/gdo/civil-](https://www.energy.gov/gdo/civil-nuclear-credit-award-cycle-1)
28 [nuclear-credit-award-cycle-1](https://www.energy.gov/gdo/civil-nuclear-credit-award-cycle-1).

Adoption of NRC NEPA Documents

47. Taking one step closer to finalizing the credit award, on August 4, 2023, DOE published a notice that it had adopted the NRC's prior NEPA documentation for Diablo Canyon as the final DOE FEIS for the award of credits under the CNC program.¹³ The only NRC NEPA documents that were adopted and republished as DOE's Final EIS are as follows:

- 1973 U.S. Atomic Energy Commission Final Environmental Statement ("ES")¹⁴;
- 1976 NRC Addendum to the 1973 ES;
- 1993 NRC Environmental Assessment ("EA") and Finding of No Significant Impact ("FONSI"), which evaluated NRC's decision to extend the reactor licenses in order to recapture time spent solely in construction by starting the 40-year period from the time the units were first operational;
- 2003 NRC EA on Independent Spent Fuel Storage Installation ("ISFSI");
- 2007 NRC Supp. EA and FONSI on Independent Spent Fuel Storage Installation.

48. The following is a brief background on the scope of these documents, all but the first of which were prepared by the NRC. The 1973 ES comprised the

¹³ See Notice of Adoption of Nuclear Regulatory Commission National Environmental Policy Act Documentation for the Operation of Diablo Canyon Power Plant and Republication as a Final DOE Environmental Impact Statement for Award of Credits to Pacific Gas and Electric Company Under the Civil Nuclear Credit Program, 88 Fed. Reg. 51798 (August 4, 2023) (adopting NRC's NEPA documentation and republishing it as a single DOE EIS (DOE/EIS-0555)); see also DOE/EIS-0555, available at <https://www.energy.gov/nepa/articles/doeeis-0555-final-environmental-impact-statement>.

¹⁴ Note that at the time the 1973 document was drafted, the detailed statement required under NEPA was termed a "Final Environmental Statement" or "ES."

1 first full environmental assessment of the DCPD and was prepared by the U.S.
2 Atomic Energy Commission (“AEC”), the predecessor agency to the NRC. AEC
3 listed the proposed action as the “continuation of construction permits . . . and
4 issuance of operating license to the Pacific Gas and Electric Company for the
5 Diablo Canyon Units 1 and 2, located on the California coast 12 miles southwest
6 of San Luis Obispo” and cooled by “once-through flow of water from the Pacific
7 Ocean.” 1973 ES at i. The principal alternatives considered were “sources of
8 energy other than nuclear,” “construction of an equivalent plant at some other
9 site,” using cooling towers instead of once-through cooling, and different
10 locations for the thermal discharge. *Id.* at ii.

11 49. For the proposed action, the agency identified the following general
12 categories of impacts from operation of the plant: (1) the discharge of heated
13 water into the cooler water of the Pacific Ocean; (2) release of background
14 radiation into the environment at a level that was “not considered to be
15 significant when compared to the natural background radiation dose”; (3) a “very
16 low risk of accidental radiation exposure” from a range of postulated accident
17 scenarios, *see* 1973 ES at 7-1 - 7-7; and (4) a series of ocean impacts including:
18 an “ecological shift in benthic organisms and fish” due to the thermal discharge,
19 some discharge of chemicals used for cooling, a decline in dissolved oxygen
20 considered to be minimal, loss of phytoplankton considered to have an
21 insignificant impact on the local ecosystem, loss of “some small fish (less than 3
22 inches) . . . killed as a result of impingement or entrainment in the cooling
23 system, “and some potential for increased mortality of avian species from contact
24 with transmission line facilities.” *Id.* at ii. The identified risks of impingement
25 focused on fish and jellyfish, drawn into the cooling water intake; and the risk of
26 entrainment was described only as to “small organisms passing through the
27 pumps and condenser tubing.” *Id.* at 5-13 - 5-14. And as DOE now explicitly
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1 concedes, the 1973 ES contained no assessment *at all* of any cumulative risks or
2 impacts of that action, *see* 89 Fed. Reg. at 73, as it was not required under
3 NEPA—then a new law—as originally drafted.

4 50. The ES also included a discussion of the site for the plant location that
5 addressed regional demography as well as geology and seismology. *See id.* at 2-1
6 - 2-29. The description of the site included an analysis of the 1970 population
7 levels in nearby towns (ranging from 3,487 in Baywood Park-Los Osos to 28,036
8 in San Luis Obispo), as well as the distance to low-population zones (6 miles),
9 the population center (10 miles), and the nearest residence (1.5 miles). *See id.* at
10 2-4. The AEC also addressed regional demography, noting that in 1970 the
11 population of San Luis Obispo County was 105,690. *See id.* at 2-4, 2-12.

12 51. The analysis of seismology, including earthquake risk, in the 1973 ES
13 was limited to 2 pages and discussed only possible site disruption and ground
14 acceleration from earthquakes on three identified faults: the Nacimiento fault (20
15 miles away), the San Andreas fault (48 miles away) and possible aftershocks, or
16 the offshore Santa Ynez fault (50 miles away). *See id.* at 2-28-2-29. Without
17 disclosing or conducting any analysis, the AEC cursorily asserted that “[t]he
18 Diablo Canyon plant has been designed to withstand safely such earthquakes as
19 discussed in the staff’s Safety Evaluation Report.” *Id.* at 2-29. The Safety
20 Evaluation Report was prepared in 1969, 55 years ago, and most importantly,
21 before the discovery of new fault lines in the area. *See id.* at 2-53 (listing
22 references). There was no discussion at all of cumulative impacts from existing
23 or reasonably foreseeable actions that will affect the same resources impacted by
24 the DCP. *See* 89 Fed. Reg. at 73.

25 52. The 1976 Addendum to the ES was prepared to address two additional
26 impacts not covered in the original ES that arose during construction of the plant:
27 impacts from the construction of transmission lines from the plant and the
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1 destruction of the benthic ecosystem of Inlet Cove as a result of siltation
2 generated by construction of the intake structure. *See* 1976 Addendum at i. The
3 Addendum provided a modified assessment of some impacts from operation of
4 the plant, “some of which are now considered to differ in extent and/or intensity
5 from those described in the Final Environmental Statement.” *Id.* These included,
6 among other impacts, a modified analysis of the impacts of thermal discharge and
7 the size and area of the thermal plume, and an analysis of the excessive amount
8 of both copper released and foam formed during the testing of the cooling water
9 system. *Id.* The NRC also addressed fish impingement and entrainment
10 impacts—but not for other wildlife—and asserted that the impact would be low.
11 *Id.* There was no discussion of population demography and no discussion of
12 seismic risks other than to promise forthcoming information in an NRC staff
13 report: “Because of the importance of the geologic stability of the Diablo Canyon
14 site, this seismic review has continued throughout the construction phase. The
15 results of this investigation, with increased emphasis on offshore fault zones, will
16 be published in the staff’s Operating License SER.” 1976 Addendum at 14. As in
17 the original ES, there was no discussion (let alone analysis) of cumulative
18 impacts. *See* 89 Fed. Reg. at 73.

19 53. The 1993 EA and FONSI were directed to NRC’s decision to extend
20 the 40-year license period such that it would begin, not with the construction
21 permit as originally issued, but at the time when the units actually became
22 operational (thereby “recapturing” the years spent in construction). The EA
23 emphasized that because the evaluations for the original ES were based on a “40-
24 year operating life” and the action of extending the expiration dates to cover the
25 full 40 years of operation did not entail any physical modifications, “there are no
26 new or unreviewed environmental impacts that were not considered as part of the
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1 Final Environmental Statement (FES) dated May 1973, relating to operation of
2 the DCP, Units 1 and 2.” 1993 EA at 2.

3 54. The EA did discuss certain impacts, such as exposure impacts from a
4 postulated accident, including updated population projections through 2025,
5 which it concluded “will not significantly impact any accident analysis
6 previously calculated.” *Id.* at 3. It also found no new ecological impacts from the
7 plant’s cooling system. *Id.* at 8. However, it contained no discussion of
8 earthquakes or seismic risks. In the end, NRC concluded that “the effects of
9 changing the expiration date . . . are bounded by the assessment in the original
10 FES”; “[i]n addition, based on the above, the Commission concludes that there
11 are no significant environmental impacts associated with the proposed
12 amendment.” *Id.* at 14. Again, there was no discussion of cumulative impacts.
13 *See* 89 Fed. Reg. at 73 (noting that first discussion of *any* cumulative impacts is
14 in the 2003 ISFSI EA).

15 55. The last two NRC NEPA documents that DOE adopted here were a
16 2003 EA, limited in scope to NRC’s narrow decision to issue a site-specific
17 license to build and operate an Independent Spent Fuel Storage Installation
18 (“ISFSI”) on the DCP site, and a 2007 Supplemental EA also addressing the
19 ISFSI, but restricted to assessing the environmental impacts from potential
20 terrorist acts. The 2003 EA did not have any new comprehensive assessment of
21 the risk of radiation exposure from postulated accidents and mentioned
22 earthquakes only once in passing, but offered no new analysis of seismology at
23 the site. *See* 2003 EA at 19. The only comment by the NRC addressing the
24 impact of such accidents, including earthquakes, was to define them and then
25 point to a separate report—prepared by PG&E as part of its license application
26 and not even included in the EA or its list of references. Specifically, noting that
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1 severe events like earthquakes are included among Design Events III and IV,
2 NRC said only that:

3 Design Event III represents an infrequent event that could be
4 reasonably expected to occur over the lifetime of the ISFSI. Design
5 Event IV represents an extremely unlikely event that is postulated to
6 occur because it establishes a conservative design basis for systems,
7 structures, and components important to safety. *Design Events II through IV are addressed in Chapter 8 of the Diablo Canyon ISFSI SAR.*

8 2003 EA at 19 (emphasis added). The 2007 Supplement was limited to adding a
9 terrorism analysis and also did not provide any comprehensive update to accident
10 risk that could ostensibly be relied upon by DOE here. *See* 2007 Supplement at 6-
11 7.

12 56. The 2003 EA did not contain any updated analysis of marine impacts
13 because NRC found that “the proposed ISFSI activities will not result in
14 discharges to the marine environment, and thus, there will be no impact on these
15 species.” 2003 EA at 13. The 2003 EA is the only DOE-adopted NEPA
16 document to address cumulative impacts in any way, but this single paragraph
17 represents the entirety of its consideration of cumulative effects:

18 The NRC has evaluated whether cumulative environmental impacts
19 could result from the incremental impact of the proposed action when
20 added to the past, present, or reasonably foreseeable future actions in
21 the area. The impact of the proposed Diablo Canyon ISFSI, when
22 combined with previously evaluated effects from the Diablo Canyon
23 Power Plant, is not anticipated to result in any significant cumulative
24 impact at the site. The offsite radiation exposure limits for an ISFSI
25 specified in 10 CFR 72.104(a) explicitly include any contribution to
26 offsite dose from other uranium fuel cycle facilities in the region.
27 Therefore, the offsite dose contribution from the DCPP has been
28 included in the evaluation of radiological impacts from the proposed
Diablo Canyon ISFSI.

2003 EA at 20. The 2007 Supplemental EA did not address either issue.

57. In sum, and considering the adopted NEPA documents in full, the
only assessments of population demography and postulated accident scenarios

1 directly disclosed in a NEPA document include: the baseline analysis first set
2 forth in the 1973 ES, the updated population projections in the 1993 EA, and
3 terrorism risk scenarios added in the 2007 Supplemental EA. The question of
4 seismic risks and area fault lines was also first set forth in the 1973 ES and has
5 not been updated by the agency *in any NEPA document* since that time. The
6 marine impacts from thermal discharges on marine ecology and the benthic
7 community, in particular, were first set forth in the 1973 ES, updated to account
8 for unanticipated impacts in the 1976 Addendum, and are noted to be unchanged
9 in the 1993 EA.

10 58. Impacts to federally-listed sea turtles were never disclosed or
11 analyzed in *any* of the NRC NEPA documents. Similarly, there has been no
12 discussion of cumulative impacts—whether involving climate change impacts or
13 earthquake scenarios—in any of the NRC NEPA documents. In fact, the only
14 mention of cumulative impacts at all in the adopted documents is in the 2003 EA,
15 which made a perfunctory and inadequate passing mention dismissing the
16 question of cumulative impacts from offsite radiation exposure from the new
17 ISFSI facility on site in conjunction with other uranium fuel cycle facilities in the
18 area. In addition, analysis of aging plant infrastructure or potential embrittlement
19 of critical features, including the pressure vessel, also does not appear in *any* of
20 the adopted NEPA documents. This is a particularly glaring omission, in light of
21 the facility nearing the end of its assumed 40-year operational lifespan and
22 considering that the agency action here has the direct result of extending the
23 plant’s lifespan beyond anything that has been previously considered, approved,
24 or analyzed under NEPA.

25 59. And yet, after reviewing these prior documents, DOE determined that
26 “there was sufficient information in the documents reviewed by DOE to complete
27 DOE’s analysis and to determine that [these] NEPA documents remain adequate,
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1 despite the age of many of these documents.” 88 Fed. Reg. at 51800. Despite the
2 obvious gaps and defects in analyses detailed above, DOE asserted that there
3 were no “significant new circumstances or information relevant to environmental
4 concerns and bearing on the proposed award of credits or the impact of the award
5 of credits” and therefore determined that “no supplemental EIS is required.” *Id.*

6 60. Failing to recognize the obvious differences between constructing two
7 new nuclear reactors, as was the proposed action in 1973, and the act of using a
8 major injection of significant taxpayer funds to keep two nuclear reactors
9 operational beyond the lifespan that was ever evaluated under NEPA, DOE also
10 claimed that the action of issuing a final award of CNC credits is “substantially
11 the same” because “both the NRC’s issuance of an operating license to DCP
12 pursuant to the NEPA documents and DOE’s award of credits under the CNC
13 Program for DCP have the purpose and effect of allowing for the continued
14 operation of DCP.” In reality, not only are the actions themselves fundamentally
15 different in that one considered licensing the DCP in the first instance and one
16 considered extending the life of two nuclear reactors nearing the of their
17 operational lifetime and under very different real-world conditions, but the
18 relevant analytical time frames of the prior NEPA analyses did not (and were not
19 intended to) evaluate the impacts of, or alternatives to, operating the DCP past
20 their 2024 and 2025 license expiration dates.

21 61. Having found the existing NEPA documents “adequate” and
22 concluded that the credit award was “substantially the same” as the original
23 action (which did not involve *any* federal funding from DOE), DOE decided to
24 adopt and republish the existing NRC NEPA documents in final form as a single
25 document which it called a “Final EIS”: DOE/EIS-0555. By calling it a Final EIS
26 rather than a Draft EIS, DOE seemingly attempted to bypass the legal procedures
27 that are required for every draft EIS, including the requirement for comment by
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1 subject matter experts (e.g., seismologists), project stakeholders, and interested
2 members of the public.

3 62. Notably, DOE also chose to add approximately 12 pages of *new*
4 discussion and analysis of impacts embedded in that same document—albeit still
5 lacking necessary analysis—despite the fact the purported purpose of that
6 document was solely to adopt the earlier NRC NEPA documents and merely
7 republish them. In other words, DOE both asserted that it could satisfy its NEPA
8 obligations merely by adopting the prior analyses by other agencies, but
9 nonetheless added ostensibly new discussion that, if anything, only underscored a
10 number of issues that still need proper analysis and disclosure to the public in
11 order to comply with NEPA.

12 63. First, DOE used these extra pages to brush aside the issue of several
13 newly discovered earthquake faults that were unknown to NRC at the time of the
14 original 1973 ES, and which have still yet to receive a requisite “hard look.”
15 DOE acknowledged that there are significant gaps in seismic analyses of the
16 earlier NEPA documents: “PG&E provided to the NRC a significant amount of
17 more recent geologic environment information that supplements the content in
18 the 1973 ES and 1976 ES Addendum.” July 2023 FEIS at 8. And yet it dismissed
19 the need to conduct any additional NEPA analysis on seismic risks because NRC
20 previously conducted its own internal assessments of the new data and found that
21 it was safe for the plant to continue operating. *Id.* In other words, despite having
22 absolutely no awareness—let alone discussion—of these new fault lines, or
23 opportunity for public comment on the risks they pose, the 51-year-old analysis
24 of seismological effects was deemed “adequate.”

25 64. Next, DOE used additional language in attempt to justify why no
26 additional NEPA analysis or public disclosure was warranted for the ecological
27 impacts from thermal discharge, impingement, or entrainment. DOE evidently
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1 came to this conclusion—not based on any analysis of its own or any review of
2 peer-reviewed scientific studies—but by relying exclusively and heavily on
3 excerpts from the dated Environmental Report prepared by none other than
4 PG&E itself (“2009 ER”). Commercial nuclear power plants are required to
5 submit a report to NRC each year describing their effects on the environment. In
6 other words, an ER is not an objective scientific assessment, but rather an
7 industry report with every incentive to minimize or downplay environmental
8 impacts.

9 65. With regard to impingement impacts, DOE reported only that the
10 2009 ER concluded that “entrainment impacts to marine fish and shellfish
11 resources from operation of DCP’s once-through cooling system . . . were
12 projected by PG&E to be small.” July 2023 FEIS at 9. Similarly for impingement
13 impacts, DOE explained only that the 2009 ER stated that PG&E completed an
14 impingement assessment of the once-through cooling system in 1986, which
15 “concluded that impingement of all marine organisms was very low, *and further*
16 *studies were not warranted.*” *Id.* at 9 (emphasis added). Lastly, DOE relayed that
17 PG&E’s 2009 ER “concluded that heat shock impacts to fish and shellfish
18 resources from operation of the once-through cooling system . . . were projected
19 to be small.” These self-serving representations by the licensee, however, are
20 neither a comprehensive review and analysis of the applicable scientific record
21 on this issue as required by NEPA, nor did DOE provide subject matter experts
22 or the public any opportunity to identify other scientific literature or evidence—
23 including information post-dating PG&E’s 2009 ER—bearing on the proposed
24 action’s significant environmental impacts due to thermal discharge,
25 impingement, or entrainment.

26 66. With regard to impacts to federally-protected sea turtles, DOE
27 disclosed that a 2005 Biological Assessment prepared by NRC identified that
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1 “continued operation of DCPD may adversely affect the green turtle, loggerhead
2 turtle, leatherback turtle, and olive ridley turtle.” July 2023 FEIS at 9. DOE also
3 disclosed that PG&E reported in 2009 that had been “nine incidences of power
4 plant intake structure impingement/trapping of threatened green sea turtles
5 entrained in the cooling system of this facility between 1994 and 2009; all were
6 released back into the ocean.” *Id.* But DOE did not recommend any further
7 analysis of sea turtle impacts, whether under NEPA or under the separate
8 requirements of the ESA. Rather, DOE determined that the existing NEPA
9 documentation on these impacts, i.e. the 1973 ES and 1976 Addendum, despite
10 containing no discussion of sea turtle impacts at all and extremely outdated
11 analysis of other marine impacts, “remain[] adequate through the current
12 operating licenses.” *Id.* at 10.

13 67. Despite all of these issues demanding proper attention and analysis
14 through NEPA by both DOE and the public, DOE concluded that no additional
15 NEPA analysis of ecological impacts was required by asserting that “PG&E is
16 required to comply with Federal, state, and local environmental regulations,
17 agreements” to protect ecological resources, and the CNC Program “would not
18 change the operating configuration or environmental impact of the DCPD
19 facilities.” *Id.* at 10. As a result, DOE asserted that it does not have to take its
20 own hard look at the current state of these fragile ecological resources —or
21 solicit comment from subject matter experts and the public on these matters. *Id.*

22 68. The agency also explained that while neither the 1973 ES nor the
23 1976 Addendum addressed cumulative impacts *at all*, the prior NEPA
24 documentation did somehow “adequately address cumulative impacts” because
25 the 2003 EA and FONSI on spent fuel storage at DCPD included a single
26 sentence dismissing the risk of cumulative impacts of offsite radiation. And DOE
27 also pointed to another one of PG&E’s past ERs, this one from 2014, that also
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1 purportedly addressed some—but not all—relevant cumulative impacts. *Id.* at 17.
2 The fact remains, however, that none of the adopted NEPA documents, nor
3 DOE’s new analysis in its republished Final EIS, have ever evaluated the
4 cumulative impacts of existing and reasonably foreseeable actions that will affect
5 the same resources that DOE’s decision will impact by extending the life of the
6 DCP. At bare minimum, DOE must look at the cumulative effects of climate
7 change and its impact on ocean temperatures and aquatic wildlife species,
8 potential climate change impacts to systems and equipment at the facility that
9 would threaten plant safety,¹⁵ and the probability of seismic events from newly
10 discovered fault lines that also threaten the safety of plant operations.

11 69. Irrespective of the lacking analysis in DOE’s adopted Final EIS, DOE
12 failed to subject its EIS (including the 12 new pages of purported analysis) to any
13 public comment, public hearing, or other scrutiny that would have allowed
14 subject matter experts, stakeholders, and interested members of the public to
15 address DOE’s cursory assumptions, provide relevant information and evidence
16 to inform DOE’s consideration of impacts and alternatives, and propose measures
17 to reduce and/or mitigate impacts to various resources. As such, information
18 disclosed for the *first time* in a “Final” EIS is not a proper method under NEPA to
19 share supplemental analysis and can in no way satisfy the agency’s NEPA
20 obligations under the CNC Program. And, in fact, the limited discussion DOE did
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22 ¹⁵ The Government Accountability Office (“GAO”) recently issued
23 recommendations to NRC to specifically address increased risks to nuclear power
24 plants from climate change. The GAO determined that NRC’s actions to assess
25 risks from natural hazards “do not fully consider potential climate change
26 effects,” including damage to systems and equipment from heat, extreme
27 weather, and storm surges, among other impacts. GAO Report. NRC Nuclear
28 Power Plants: NRC Should Take Actions to Fully Consider the Potential Effects
of Climate Change (April 2, 2004), <https://www.gao.gov/products/gao-24-106326>. DOE must address these same cumulative impacts here.

1 offer only raises serious questions about why it did not address all of these issues
2 in a proper, transparent NEPA analysis subject to public scrutiny.

3
4 *Record of Decision and Final Award*

5 70. On January 2, 2024, DOE published its ROD authorizing the final
6 award of credits to Diablo Canyon under the CNC program. 89 Fed. Reg. at 69.
7 This decision enables PG&E to receive payments over a four-year period from
8 January 2023 to December 2026 in connection with Diablo Canyon, with
9 payment of credits set to begin in 2025 and “will be paid retroactively to
10 compensate PG&E for DCPD operations in the prior year(s).” *Id.*

11 71. The financial assistance from the CNC credit award will allow Diablo
12 Canyon to be operational at a minimum through 2026, and likely beyond. In
13 other words, even if NRC’s administrative exemption will permit Diablo Canyon
14 to operate past the expiration of its licenses in 2024 and 2025, no NEPA analysis
15 has ever considered the environmental impact of these units being operational
16 beyond that timeframe—operation that could not have occurred without DOE’s
17 injection of substantial federal funding to extend the lifespan of these nuclear
18 reactors.

19 72. As in the July 2023 FEIS document, DOE once again claimed in the
20 ROD that it had “considered changes to the affected environment and
21 environmental impacts of DCPD operation since the publication of the 1973 ES”
22 and proceeded to repeat the same post-hoc discussion of environmental impacts
23 that it had added into the FEIS document, despite the fact that none of the new
24 “analysis” was ever part of any formal NEPA analysis or disclosed to the public
25 before being republished as a “Final EIS.” *See* 89 Fed. Reg. at 70-73.

26 73. While most of the ROD’s discussion of environmental impacts largely
27 repeats what DOE shoehorned into the July 2023 FEIS adoption document, DOE
28 does make an additional concerted effort in the ROD to explain the obvious lack

1 of any cumulative effects analysis in the NRC NEPA documents. *See* 89 Fed.
2 Reg. at 73. But this is simply not enough. First, DOE again acknowledges that
3 cumulative impacts were not considered at all in the original 1973 ES, but argues
4 that their consideration in the 2003 ISFSI EA and one other non-NEPA
5 document, the 2014 ER Amendment prepared by PG&E (which DOE admits is
6 not comprehensive), together are legally sufficient to satisfy DOE's duty to fully
7 evaluate cumulative effects. But they do not even come close. The 2003 ISFSI
8 EA was focused only on offsite radiation impacts of spent fuel storage and thus is
9 not a substitute for the full range of cumulative impacts related to extending the
10 lifespan of DCCP. The 2003 ISFSI EA has a single paragraph on cumulative
11 impacts, *see supra* ¶ 56, which was limited to the question of offsite radiation
12 exposure. And the 2014 ER Amendment was not a NEPA document and cannot
13 stand in for one. DOE admits that this report did not in fact address cumulative
14 impacts for "Noise, Environmental Justice, Waste Management, [or] Global
15 Climate Change." 89 Fed. Reg. at 73. And even if it were comprehensive, which
16 it was not, unless it was disclosed to the public for comment at some point under
17 40 C.F.R. § 1503.1, it cannot satisfy the agency's NEPA obligations now.

18 74. Still attempting to paper over this gaping hole in its NEPA analysis
19 (or lack thereof), DOE also attempts to argue that the missing cumulative impacts
20 analysis is not problematic because "[w]ith respect to overall cumulative impacts,
21 DCCP's continued operation is governed by Federal and State permits, licenses
22 and plans which ensure that any impact from DCCP's continued operation are
23 minimized. . . . Therefore, DOE has determined the NEPA documentation and
24 other supporting documents adequately address cumulative impacts for continued
25 operation through the period DCCP's current NRC licenses remain in effect." *Id.*
26 But the existence of state and federal permitting programs cannot be used as an
27 excuse to bypass an entire category of impact analysis under NEPA, especially
28

1 where none of the adopted NEPA analyses have even contemplated or analyzed
2 DCCP operation past the current license expiration. Were that acceptable, it
3 would render the cumulative impact analysis requirement under NEPA and its
4 regulations effectively void.

CLAIM FOR RELIEF

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7 75. Plaintiff hereby incorporates Paragraphs 1-74 by reference.

8 76. By adopting a collection of prior, outdated NEPA documents as its
9 Final EIS that, even taken together, do not constitute an adequate EIS because
10 they fail to take a hard look at reasonably foreseeable direct, indirect, and
11 cumulative impacts associated with DOE's action both through 2026 and for as
12 long as the DCCP is likely to remain operational after 2026 as a result of the
13 award—including, but not limited to, the current impacts of potential accidents
14 that could result in radiation release, updated demographic information, the safety
15 of aging plant infrastructure, the seismic risk posed by recently discovered
16 earthquake faults, the current ocean impacts of thermal discharge from DCCP's
17 once-through cooling system and related wildlife impacts, or cumulative impacts
18 relating to myriad resources affected by DOE's action—DOE violated NEPA, its
19 implementing regulations, and the APA.

20 77. By adopting a collection of prior NEPA documents as its EIS,
21 bypassing any draft publication, and publishing it as “final” without opportunity
22 for notice and comment even though the action under review is not “substantially
23 the same” as the original action—because the action, the potential impacts, the
24 purpose and need for the action, and the range of possible alternatives are all
25 fundamentally different—DOE violated NEPA, its implementing regulations, and
26 the APA.

27 78. By failing either to supplement the existing NEPA documents from
28 other agencies, or to prepare its own original adequate statement, and publish the

1 new analysis as a draft available for public comment under 40 C.F.R. § 1503.1,
2 DOE violated NEPA, its implementing regulations, and the APA.

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff respectfully requests that the Court enter
6 judgment for Plaintiff ordering the following relief:

7 1. Declaring that Defendants have violated NEPA and its implementing
8 regulations and also have acted arbitrarily, capriciously, and contrary to law
9 under the APA;

10 2. Setting aside DOE's January 2024 ROD and July 2023 FEIS, and
11 remanding those matters to DOE for further consideration consistent with
12 applicable federal law;

13 3. Enjoining DOE from taking any further actions in furtherance of the
14 CNC award for Diablo Canyon until DOE has fully complied with federal law;

15 4. Awarding Plaintiff its costs of litigation, including reasonable expert
16 fees and attorneys' fees, pursuant to the Equal Access to Justice Act, 28 U.S.C. §
17 2412, and/or any other applicable provision of law; and

18 5. Granting Plaintiff such further relief as may be necessary and
19 appropriate or as the Court deems just and proper.

20
21 Dated: April 2, 2024

Respectfully submitted,

22 /s/ Michael Lozeau

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